
CHAPTER 3. PROCEDURES FOR REMOVAL, SUSPENSION OF MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, FURLOUGH FOR 30 DAYS OR LESS

3-1 General Provisions

- A. The official authorized to initiate or effect adverse actions (paragraphs 1-10A and 1-10B) must obtain advice and assistance of a personnel specialist from the servicing human resources office. This assistance is required to ensure the procedural adequacy of the document with respect to OPM and HUD requirements. The assistance includes the personnel specialist's advice on the reasons for taking the action, as well as the appropriateness of the action; adequacy of the evidence; and penalty. The supervisor or manager and the servicing personnel specialist must refer to Chapter 4, HUD Table of Offenses and Penalties, and Appendix 1 for guidance.
- B. The servicing personnel specialist and the Proposing Official are responsible for consulting with the Associate General Counsel for Human Resources Law in Headquarters about the legal sufficiency of a proposal to take the actions described below.
 - 1. An adverse action against a Headquarters or Field employee at the GS-14 level or higher, or a HUD attorney.
 - 2. An adverse action against a Headquarters or Field employee at the GS-13 level or below based in whole or in part upon a violation of Standards of Ethical Conduct; or
 - 3. An adverse action against a Headquarters employee at the GS-13 level or below when the facts or issues are controversial or precedent-setting.
- C. The Field personnel specialist and the Proposing Official are responsible for consulting with the Field Assistant General Counsel about the legal sufficiency of adverse actions to be taken against a Field employee at the GS-13 level or below (except a HUD attorney) when the facts or issues are controversial or precedent-setting. (Removal of these employees based in whole or in part upon the violation of Standards of Ethical Conduct is covered in paragraph 3-1B.2. above.)
- D. In actions involving off-duty misconduct, whether or not specifically related to official duties, the MSPB requires proof of nexus.

- E. It is HUD's policy that a full grade reduction proposed as a disciplinary measure (e.g., from GS-12/3 to GS-11/3) is appropriate in most cases in which a reduction in grade is warranted. Some circumstances may warrant reduction to Step 1 or more than one grade level.

3-2 Notice of Proposed Adverse Action

The Notice shall include the following information:

- A. The specific type of adverse action that is being proposed. If the proposed action is or includes, a reduction in grade and/or pay, the proposed title, series, grade, step, and salary amount, as appropriate, must be identified. When the proposed penalty is at the upper end of the range in one of the offense categories of the Table of Offenses and Penalties, or is a second or third offense, "aggravating factors" (refer to paragraph 4-2B) on which the Proposing Official relies to elevate the penalty should be included in the proposal notice so the employee will have a fair opportunity to respond to them.
- B. A statement that the proposed action will not become effective until at least 30 calendar days following the date the employee receives the notice. (Refer to paragraph 3-3 for exceptions.)
- C. The specific charge(s) and specification(s)/reason(s) for the proposed action.
- D. When some but not all employees in a given competitive level are being furloughed, the basis for selecting a particular employee for furlough, as well as reason for furlough.
- E. A statement that a copy of the material relied upon to support this proposed action is attached.
- F. Any aggravating factors considered in selecting the penalty in order to afford the employee a full opportunity to reply.
- G. A statement identifying the Deciding Official.
- H. A statement that the employee is entitled to answer both orally and/or in writing. (The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted.)

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- I. A statement that the employee is entitled to a reasonable amount of time, but not less than 21 days, to answer the notice. If the employee wishes additional time in which to answer, he/she must submit a request in writing to the Deciding Official (or designee) before the expiration of the 21-day response period. The request must state the reason for needing the extension.
 - J. Notification that the employee's answer, if any, should be addressed to the Deciding Official (or designee). (Refer to paragraphs 1-10B and 1-10G.)
 - K. A statement that the employee is entitled to a reasonable amount of official time, up to 16 hours within the period described in paragraph I above, for preparing the oral and written responses. Use of official time must be requested and approved in advance by the employee's supervisor. If the employee wishes additional official time, he/she must submit a written request to the Deciding Official explaining the reason for the request.
 - L. Notification that the employee may be represented by an attorney or other representative. (Refer to paragraph 2-2I.)
 - M. Notification that any answer the employee submits will be considered in reaching a decision.
 - N. A statement informing the employee where this Handbook, pertinent statutes, and OPM regulations are available for review.
 - O. Notification that a written decision and the specific reasons for that decision will be issued within 35 calendar days of receipt of employee's response, or expiration of notice period, if no response is given.

3-3 Exceptions to Requirements for Notice of Proposed Adverse Action

A. Crime Exceptions

- 1. When there is reasonable cause to believe an employee has committed a crime for which a sentence of imprisonment may be imposed, HUD may give the employee less than the required 30-day advance written notice when proposing a removal or suspension (including indefinite suspension). HUD will give the employee the opportunity to respond orally and/or in writing, and furnish affidavits and other

documentary evidence in support of a response, within such time as would be reasonable, but no less than 7 days. OPM regulations allow, nevertheless, for the placement of an employee in a nonduty status with pay for such time as may be necessary to effect an action under the "crime provision." HUD may use details to other jobs, assignment of unspecified duties, or administrative leave under the same conditions described under paragraph B below.

2. An employee who has been arrested with or without a warrant and held for further legal action by a magistrate court or indicted by a grand jury for a serious crime should be indefinitely suspended without pay pending the outcome of the judicial process. If the employee pleads guilty or is convicted, HUD may proceed with removal or other appropriate action.
3. When a proposal is issued to indefinitely suspend an employee during the period of an indictment, the notice must clearly discuss the connection or nexus between the behavior or conduct that led to the indictment and the individual's employment with HUD. An indefinite suspension is temporary. It must have a determinable condition subsequent which will bring the action to an end, such as a conviction, acquittal, or plea of guilty.
4. The crime exception in no way precludes HUD from removing an employee for administrative reasons for other misconduct unrelated to the alleged crime for which the employee was previously arrested or indicted.

B. Other Exceptions

1. HUD supervisors and managers may use details to other jobs, assignment of unspecified duties, or administrative leave during the notice period in order to place an employee away from the work station when the retention of the employee in an active duty status in his/her position is detrimental to the accomplishment of the Agency mission, for example, where retention may:
 2. Pose a threat to the employee, his/her fellow co-workers, or the general public;
 3. Result in loss of or damage to Government property; or
 4. Jeopardize legitimate Government interests.

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5. Under these circumstances administrative leave should be used only in rare cases. Follow agency delegated personnel management authority.

3-4 Employee's Answer

- A. The Deciding Official may designate a representative to hear the employee's oral answer. The designee may not be the official who issued the notice of proposed adverse action. In addition, the designee must not have taken part in the events that led to issuance of the notice of proposed adverse action (this includes any investigator who may have investigated the case), or be under the supervision of the official who proposed the action. The designee must be in a position to effectively recommend a decision to the Deciding Official.
- B. Whether the Deciding Official hears the employee's oral answer, or whether a designee hears the answer, each is reminded that, as with a written answer, the employee or representative has the right to say whatever he/she wishes to influence the decision or to reduce the penalty.
- C. If the employee answers orally, the Deciding Official, or the Deciding Official's designee, shall make a written summary or arrange for a verbatim transcript of the meeting. If a court reporter is used, the cost will be paid by the HUD program office. The summary/transcript shall become part of HUD's official case file.
- D. The employee's oral summary/transcript and written replies, if made, shall both become a part of HUD's official case file.

3-5 Decision and Notice of Decision

At the earliest practicable date following receipt of the employee's response or following expiration of the period within which the employee was given the opportunity to respond, the Deciding Official shall:

- A. Obtain advice and assistance of a personnel specialist from the servicing human resources office regarding the decision and the appropriateness of the penalty. The Deciding Official should exercise caution in discussing the merits of the case with the Proposing Official. His/her decision must be based on the evidence relied upon to

support the proposal, and not on "ex parte" (with only one side present) communication; i.e., conversation that provides additional evidence that is not provided to the employee for comment or response.

- B. Consider the employee's answer(s), if any.
- C. Issue a decision notice to the employee at or before the time the action will be made effective with a copy to the employee's representative, if any. If a bargaining agreement has different requirements, follow the direction in the Agreement. Such a decision will be made within 35 days of the receipt of the employee's response, or following expiration of the notice period. If the Deciding Official determines that further investigation is necessary, the time limit for issuance may be extended for an appropriate amount of time. The employee is to be notified of such an extension. The decision notice shall include the following information:
 - 1. Whether the action to be taken is the same as proposed, a less severe action than proposed (and if so, the specific action to be taken), or no action. The decision notice must specify any mitigating and aggravating factors that were considered in reaching a decision. When aggravating factors considered are the same as those included in the notice of proposed adverse action, the decision notice should indicate that consideration was given to those factors.
 - 2. Which charge(s) and specification(s)/reason(s) in the notice of proposed adverse action were sustained by a preponderance of the evidence and which were not sustained. (If only one specification is sustained, the charge is sustained.)
 - 3. When the action is based on multiple charges that are each serious enough to warrant the penalty of removal, it should be so stated. (If a third party sustains some but not all of the charges, the Agency will be in a good position to argue that the removal should stand.)
 - 4. The effective date of the adverse action, which must not be less than 30 calendar days following the date the employee received the notice of proposed adverse action. (Refer to paragraph 3-3 for exceptions.) If a Saturday, Sunday, or holiday is the last day of the notice period, the notice period is extended to the next workday.

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5. The employee's right of appeal to the appropriate office of the MSPB (address included). Employees covered by a collective bargaining agreement which allows arbitration on the action may elect to appeal to the MSPB or the Union may invoke arbitration, but not both. (If the decision is to impose a lesser penalty which results in a suspension of 14 days or less, the employee is not entitled to appeal to the MSPB. The union is entitled, instead, to invoke arbitration.)
 6. If the employee has raised discrimination as an issue in his/her response or wishes to raise discrimination as an issue, the employee should be advised of the right to raise the claim as a defense in connection with an action (that is otherwise appealable to the MSPB) or of the option to file an equal employment opportunity (EEO) complaint (or discrimination grievance under a negotiated grievance, if applicable) in lieu of an appeal to MSPB.
 7. The time limit for submitting an appeal under the MSPB regulations is not later than 30 calendar days after the adverse action has been effected.
 8. A copy of the MSPB regulations.
 9. A copy of the MSPB appeal form contained in Appendix 3.
 10. If the employee is being removed from the Federal service and has claimed his/her misconduct was due to a medical condition, provide the employee with information on applying for disability retirement, if the employee has the requisite years of service.